

July 18, 2012

Raja Mitwasi
966 Las Rosas Dr.
West Covina, CA 91791

Re: Your Request for Informal Assistance
Our File No. I-12-104

Dear Mr. Mitwasi:

This letter responds to your request for advice regarding the “revolving door” provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your request as one for informal assistance.²

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other post-governmental employment provisions. Accordingly, we are unable to advise you on the impact of the Public Contract Code with respect to your situation.

QUESTION

Do the “revolving door” provisions under the Political Reform Act apply to you as a former state employee when you have been separated from state service for more than one year?

CONCLUSION

The one-year ban preventing certain appearances before your former state agency no longer applies because you have been retired from state service for more than one year. However, the permanent ban on “switching sides” in a judicial or quasi-judicial proceeding prevents you from working on a Caltrans project that is a proceeding within the meaning of Section 87400(c) if you worked on that proceeding as an employee of Caltrans.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

In 1983, you began your career with the California Department of Transportation (Caltrans). In 2003, you were promoted to the position of Chief Deputy District Director. In that position you; worked closely with deputies of various Caltrans divisions to ensure timely delivery of state projects; improved communication between the deputies and Caltrans staff; resolve personnel issues; and assisted with budgetary matters.

In February 2010, you transferred to a new location in order to take on the role as Project Manager for the construction of the Southern Regional Material Laboratory (SRL). Ultimately, on June 15, 2011, you retired from state service. On June 18, 2011, you began your employment with Parsons as the Pasadena Office Area Manager. You would like to know if you can act as a representative for Parsons on state projects involving Caltrans.

ANALYSIS³

Public officials who leave state service are subject to two types of post-governmental employment restrictions under the Act, colloquially known as the “revolving door” prohibitions. The first is the “permanent ban” provision, which prohibits a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402, Regulation 18741.1.) The second is the “one-year ban” provision, which prohibits certain state employees from communicating, for compensation, with their former agency for the purpose of influencing certain administrative or legislative action. (See Section 87406, Regulation 18746.1.) Because it has been over one year since you left state service, the one-year ban no longer applies, and our analysis is limited to the provisions of the permanent ban.

I. The Permanent Ban on “Switching Sides”

The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402; Regulation 18741.1.)

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. “‘Judicial, quasi-judicial or other proceeding’ means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency. . .” (Section 87400(c).) Additionally, an official is considered to have

³ The following analysis is intended to provide you with a general overview of the Act’s permanent ban on “switching sides” to reference and apply as appropriate. Because the one-year ban no longer applies to your situation, we do not provide a similar analysis.

“participated” in a proceeding if he or she took part in the proceeding “personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information. . . .” (Section 87400(d).)

Furthermore, “[t]he permanent ban does not apply to a ‘new’ proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A ‘new’ proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings.” (*Rist* Advice Letter, No. A-04-187; see also *Donovan* Advice Letter, No. I-03-119.) New contracts with the employee's former agency in which the former employee did not participate are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A new contract is one that is based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; see also *Anderson* Advice Letter, No. A-98-159.)

While we have detailed the general provisions of the permanent ban for your review, you have not provided any information as to your participation in any specific proceeding while employee at Caltrans that may affect your ability to engage in any of the conduct listed herein. To apply the permanent ban to your situation, you need to determine if any of the projects in which you may engage on behalf of Parsons involve a proceeding in which you participated as a member of Caltrans. (Regulation 18741.1(a)(4).) If, upon your determination, you have any further questions, you are encouraged to seek further advice.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

JCW:jgl